

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GILBERTO D. CALVILLO,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 4:17-cv-391
	§	
EL PATIO RESTAURANT & CLUB,	§	
LLC, dba EL PATIO MEXICAN	§	
RESTAURANT and	§	
D. SCOTT SULLIVAN,	§	
INDIVIDUALLY,	§	
	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

SUMMARY OF SUIT

1. El Patio Restaurant & Club, LLC, dba El Patio Mexican Restaurant (the "Company") is a restaurant and bar in the Houston area. Unfortunately, the Company did not pay its non-exempt employee, Plaintiff Gilberto D. Calvillo ("Calvillo"), time-and-one-half overtime wages for all hours worked over forty (40) per workweek. Defendant D. Scott Sullivan ("Sullivan") is the president of the Company. Reference to the "Defendants" is to the Company and Sullivan, collectively.

2. Accordingly, Calvillo brings this action to recover all earned but unpaid wages, including overtime wages; liquidated damages; and attorneys' fees owed to him under the Fair Labor Standards Act, 29 U.S.C. § 207 (2017) (the "FLSA").

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 29 U.S.C. § 216(b) (2017) and 28 U.S.C. § 1331 and § 1367 (2017).

4. Calvillo brings this Complaint in the district in which the Company does business and where a substantial portion of the conduct charged herein occurred. As such, venue is proper in this district pursuant to 28 U.S.C. § 1391(b) (2017).

THE PARTIES

5. Calvillo, a resident of Harris County, Texas, was employed by the Company within the meaning of the FLSA during the three (3) year period preceding the filing of this Complaint. In performing his duties for the Company, Calvillo engaged in commerce or in the production of goods for commerce.

6. The Company, a Texas limited liability company doing business in Houston, Texas, is an enterprise engaged in commerce. The Company has acted, directly or indirectly, in the interest of an employer with respect to Calvillo. The Company may be served with process by serving its registered agent, Curt M. Langley, 1401 McKinley, Suite 1900, Houston, Texas 77010.

7. Sullivan, the Company's president, is an individual residing in Houston, Texas. Sullivan has acted, directly or indirectly, in the interest of an employer with respect to Calvillo. Sullivan may be served with process at 3812-D W. Alabama, Houston, Texas 77027.

BACKGROUND

8. Calvillo, a non-exempt employee who worked for the Company as a bartender, was paid the same amount each week regardless of the number of hours he worked each week.

9. At no time during Calvillo's employment with the Company did his duties qualify for exemption from the overtime requirements of the FLSA.

10. Nevertheless, Calvillo regularly worked more than forty (40) hours per week but was not paid at one and one-half times his regular rate of pay for hours worked in excess of forty (40) hours each workweek.

11. Sullivan has a substantial financial interest in the Company and is directly involved in:

- a. the hiring and firing of the Company's employees;
- b. the day-to-day operations of the Company as they relate to defining the terms of employment, workplace conditions, and the level of compensation to be received by Company employees;
- c. the Company's finances; and
- d. corporate decisions.

CAUSE OF ACTION

A. Unpaid Overtime Compensation

12. Calvillo regularly worked more than forty (40) hours per week, but was not compensated for his overtime hours at one-and-one-half times his regular rate of pay.

13. As a non-exempt employee, Calvillo was entitled to be paid time-and-one-half for all hours worked in excess of forty (40) hours in a workweek. 29 U.S.C. § 207(a) (2017). Accordingly, the Defendants' practice of failing to pay Calvillo overtime compensation was and is a clear violation of the FLSA.

14. No exemption excused the Defendants from paying Calvillo time-and-one-half for hours worked over forty (40) hours. Nor did the Defendants make a good faith effort to comply with the FLSA. Instead, the Defendants knowingly, wilfully, or with reckless disregard carried out their illegal pattern or practice regarding overtime compensation with respect to Calvillo.

15. Accordingly, Calvillo is entitled to overtime pay in an amount which is one-and-one-half times his regular rate of pay.

16. Additionally, Calvillo is entitled to an amount equal to all of his unpaid overtime wages as liquidated damages.

17. Finally, Calvillo is entitled to reasonable attorneys' fees and costs of this action. 29 U.S.C. § 216(b) (2017).

PRAYER

WHEREFORE, Calvillo requests that this Court award him judgment against Defendants El Patio Restaurant & Club, LLC, dba El Patio Mexican Restaurant and D. Scott Sullivan, jointly and severally, for:

- a. damages for the full amount of his unpaid overtime compensation;

- b. an amount equal to his unpaid overtime compensation as liquidated damages;
- c. reasonable attorneys' fees, costs and expenses of this action;
- d. pre-judgment interest and post-judgment interest at the highest rates allowable by law; and
- e. such other and further relief as may be allowed by law.

Respectfully submitted,

/s/ Mark Siurek

Mark Siurek
TBA# 18447900
Fed ID# 9417
3334 Richmond Ave, Suite 100
Houston, Texas 77098
713-522-0066 (telephone)
713-522-9977 (fax)
msiurek@warrensiurek.com

ATTORNEY-IN-CHARGE FOR PLAINTIFF
Gilberto D. Calvillo

OF COUNSEL:

WARREN & SIUREK, L.L.P.
Patricia Haylon
TBA# 09281925
Fed ID# 13941
3334 Richmond Ave, Suite 100
Houston, Texas 77098
713-522-0066 (telephone)
713-522-9977 (fax)
thaylon@warrensiurek.com